IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
WRIT PETITION NO.3186 OF 2006

Sunorange Enterprises ...Petitioner.
V/s.
The Cosmos Co-operative Bank Ltd., Pune
& 4 Ors. ...Respondents.

Mr.Nilesh Pawaskar with Ms.Aparna Vhatkar for the Petitioner.
Ms.Sarita D'Lima for the Respondent No.1.
Mr.Rajesh R.Mishra for the Respondent No.5.

CORAM: B.H.MARLAPALLE &
J.H.BHATIA, JJ.
DATE : 5th December, 2006.

P.C.:

1. This petition was heard from time to time and when Mr.Bhange appeared before us on behalf of the petitioner on 17-11-2006, it was made clear that the challenge to the impugned order passed by the lower appellate tribunal was devoid of merits and it was also pointed out to us by the said learned counsel that the property attached was also auctioned. Subsequently, the petitioner is appearing before us through another learned counsel today and prayer is made before us to grant time for seeking amendments so as to get the matter remanded to the lower appellate tribunal. We are not in favour of adjourning the petition and more so having heard the petition at length atleast on two occasions.

2. The petitioner being aggrieved by the judgment and order passed on 20-12-04 by the learned Presiding Officer of the Debt Recovery Tribunal at Pune in M.A.No.137 of 2004 had approached the Appellate Tribunal in Appeal No.37 of 2005 and the order passed by the Debt Recovery Appellate Tribunal was in application/appeal filed under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (For short, the 'Securitisation Act').

3. Before the Tribunal, two main issues were re-agitated, namely, (1)-delay condonation and (2)-locus standi.

4. On the point of limitation, the Appellate Tribunal referred to the judgment of the Supreme Court in the case of Mardia Chemicals Limited Vs. Union of India 2004(5) ALL MR SC 484 and held that the proceedings filed under Section 17 of the Securitisation Act are in the nature of original proceedings and though referred to as " Appeal", it has to be treated as an application and consequently, Section 5 of the

Limitations Act would not be applicable to the proceedings initiated under Section 17 of the Securitisation Act.

5. It was argued before us that the judgment of the Supreme Court in the case of Mardia Chemicals Limited (Supra) was obiter dicta. We have gone through the said judgment and we agree with the Tribunal that it has been held that the proceeding under Section 17 of the Securitisation Act are not in the nature of appeal proceedings in the strict sense and, therefore, the provisions of Section 5 of the Limitation Act would not be applicable. On the second issue even if we hold in favour of the petitioner, it really has no consequence because the proceedings taken out before the Debt Recovery Tribunal were hit by limitation and on that sole ground itself findings recorded by both the forums will have to be confirmed.

6. Hence, the petition is rejected summarily.

(J.H.BHATIA,J.) (B.H.MARLAPALLE,J.)